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IN THE SUPREME COURT OF FLORIDA

THE STATE OF FLORIDA AND THE SEVERAL PROPERTY OWNERS, TAXPAYERS AND CITIZENS OF THE STATE OF FLORIDA, INCLUDING NON-RESIDENTS OWNING PROPERTY OR SUBJECT TO TAXATION THEREIN, AND OTHERS HAVING OR CLAIMING ANY RIGHT, TITLE OR INTEREST IN PROPERTY TO BE AFFECTED BY THE ISSUANCE OF THE BONDS HEREIN DESCRIBED, OR TO BE AFFECTED THEREBY,

CASE NO. 89,332

FILED
SID J. WHITE
FEB 27 1997
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

Defendants/Appellants,

vs.

FLORIDA HURRICANE CATASTROPHE FUND FINANCE CORPORATION, a public benefits corporation,

Plaintiff/Appellee.

REPLY BRIEF OF APPELLANTS THE STATE OF FLORIDA AND THE SEVERAL PROPERTY OWNERS, TAXPAYERS AND CITIZENS INCLUDING CERTAIN NON-RESIDENTS OWNING PROPERTY AND ALL OTHERS CLAIMING ANY INTEREST IN PROPERTY TO BE AFFECTED BY THE ISSUANCE OF CERTAIN REVENUE BONDS

William N. Meggs, Esq.
State Attorney
Second Judicial Circuit
C. W. GOODWIN
Assistant State Attorney
301 S. Monroe Street, Suite 475
Tallahassee, Florida 32399
(904) 488-6701

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ISSUE ON APPEAL

WHETHER THE CIRCUIT COURT COMMITTED ERROR IN VALIDATING THE REVENUE BONDS TO BE ISSUED BY THE FLORIDA HURRICANE CATASTROPHE FUND FINANCE CORPORATION, A PUBLIC BENEFITS CORPORATION CREATEDBYLAW.	2
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SUMMARY OF ARGUMENT

This Reply Brief is very short and raises the issue of whether revenue bonds with a public purpose may be issued **by** a "public benefits corporation" as a new form of entity which **was** intended to be neither a state agency nor a unit of local government. This Court should act with caution and restraint in applying Article VII, section 11(a) and (d) to this new approach to bond financing in Florida.

ARGUMENT

WHETHER THE CIRCUIT COURT COMMITTED ERROR IN
VALIDATING THE REVENUE BONDS TO BE ISSUED BY
THE FLORIDA HURRICANE CATASTROPHE FUND FINANCE
CORPORATION, A PUBLIC BENEFITS CORPORATION
CREATED BY LAW.

This Court should recognize that the plaintiff, a "public benefits corporation," will **be** the issuer of up to \$10 billion in revenue bonds under the judgment below. This will be a departure from existing law concerning public or private entities and the issuance of bonds. Fulfilling his statutory responsibility to raise the issues, the Appellant/State Attorney suggests that the Court should closely consider whether this public benefits corporation should be recognized as a true distinct legal entity from the State of Florida and whether the bonds are truly intended for fixed capital outlay projects or purposes incidental thereto.

There **is** no question that the Florida State Board of Administration (the "SBA") is an agency of the State and that this agency could not issue these bonds. Further, the Hurricane Catastrophe Trust Fund (the "Trust Fund") functions herein as a state agency and this entity also could not issue these bonds. If either the SBA **or** the Trust **Fund** attempted to issue these revenue bonds and pledged to repay them, then Article VII, section 11 of the Florida Constitution would be violated.

Thus, this Court is presented with the question of whether these bonds may be issued by a new legal entity which the Legislature attempted to create as separate and distinct from the State and its agencies. These bonds should not be allowed because

they violate the basic principle preventing the state or its agencies from doing indirectly what cannot be done directly. See, e.g., Tedder v. Video Electronics, Inc., 491 So. 2d 533 (Fla. 1986). In order to permit the issuance of the bonds, the distinction and separation between the State of Florida and the plaintiff corporation must be found to be real rather than merely apparent.

Every person connected with the public benefits corporation is a full time state official or employee. The board of directors of the corporation is composed of the Governor, Comptroller, Treasurer, the director of the Division of Bond Finance of the State Board of Administration and the chief operating officer of the Florida Hurricane Catastrophe Trust Fund. The chief operating officer of the corporation is employed **by** the State of Florida and is **also** the head of the Hurricane Catastrophe Trust Fund. These public officials could not shed their state-official status for purposes of authorizing the issuance of these bonds. The corporation is actually nothing more than the alter ego of the State of Florida, created in an attempt to permit the State to do indirectly what it could not do directly.

In addition, these bonds will be repaid from state tax revenues in violation of Article VII, section 11(d) of the Florida Constitution. The monies which will be used to repay the bonds are state tax revenues because they are raised solely to obtain revenue for a governmental purpose and because they will **be** collected by state agencies pursuant to authority granted under state law.

The Trust Fund will collect reimbursement premiums from insurance companies writing covered policies on residential property. **If** these premiums are not sufficient to cover the necessary reimbursement payments to insurance companies after a hurricane, then emergency assessments against these and other insurance companies will **be** directed **by** the **SBA** and imposed and collected by the Florida Department of Insurance. These emergency assessments will be made against the companies writing covered policies and also against other companies writing property and casualty lines under section 215.555(6)(a)3, Florida Statutes (1996).

Even if these revenues are not determined to be state tax revenues they could **be** pledged only to finance state fixed capital outlay projects pursuant to Article VII, section 11(d). The reimbursement of insurance companies for payments made to policyholders for losses suffered due to a hurricane is clearly not a state fixed capital outlay project.


In the alternative, if this Court finds that the plaintiff public benefits corporation is a valid entity for issuance of revenue bonds, then this Court is still presented with the question of whether this particular corporation was validly created in the 1996 amendments to the Trust Fund statute which were not passed with a three-fifths majority in a separate bill for that purpose only. **As** pointed out in the Answer, Article III, section 19 of the Florida Constitution requires a three-fifths vote for the creation of a trust fund. Here, the Trust Fund was created in 1993 and

amended in 1996, which amendment created the public benefits corporation for the first time as a part of the hurricane bonding process. This new form of legal entity for the issuance of bonds to fund the Trust Fund should have been subjected to the same constitutional vote requirements as were applicable to the Trust Fund in the initial 1993 legislation.

CONCLUSION

The judgment validating the bonds should be carefully analyzed and approved only if the Court construes the Florida Constitution to allow this new approach for the issuance of revenue bonds.

William N. Meggs, Esq.
State Attorney
Second Judicial Circuit

By: 
C. W. GOODWIN
Assistant State Attorney
301 S. Monroe Street
Suite 475
Tallahassee, Florida 32399
(904) 488-6701
Fla. Bar No. 162206

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail to John K. Aurell and John R. Beranek, Ausley & McMullen, Counsel for the Florida Hurricane Catastrophe Fund Finance Corporation, P.O. Box 391, Tallahassee, Florida 32302, this 27th day of February, 1997.


Assistant State Attorney